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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,570	03/12/2004	John Medlin Snow	0272.INNO.C11.C1	6467
27472	7590	08/19/2008	EXAMINER	
BATEMAN IP LAW GROUP P.O. BOX 1319 SALT LAKE CITY, UT 84110			GETTMAN, CHRISTINA DANIELLE	
			ART UNIT	PAPER NUMBER
			3734	
			MAIL DATE	DELIVERY MODE
			08/19/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/799,570

**Applicant(s)**

SNOW ET AL.

**Examiner**

CHRISTINA D. GETTMAN

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

The indicated allowability of claims 15, 21-23, 38, and 46-48 is withdrawn in view of the newly discovered reference(s) to Bryant. Rejections based on the newly cited reference(s) follow.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: line 6, change "can" to --to--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 16-19, 24, 25, 27, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Funabashi et al. (U.S. Patent NO. 4,794,583). Funabashi et al. disclose a carriage that holds a device that is movable outside the housing, while remaining attached thereto, and moving within the housing for the purpose of inserting a device into the housing (ref. 3 moves in and out of larger box by way of Fig. 2, which includes a gear and teeth). It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, since the structural limitations of the claims are met by Funabashi et al., the claims are properly rejected.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Funabashi et al. in view of Koken et al. (U.S. Patent No. 4,672,598). Funabashi et al. discloses the invention substantially as claimed except for a release button. Koken et al. (ref. 4) teach a release button to move a carriage in and out of a housing. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Funabashi et al. with a release button, as taught by Koken et al., in order to move the carriage from the inside to the outside of the housing, in order to load an object into the carriage, and to move the carriage back inside of the housing, in order to use the object.

Claims 1, 2, 6-14, 16-19, 24, 25, 27, 28, 32-34, 39-43, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palson et al. (5,119,806) in view of Fox et al. Palson et al. teach a device for dispensing medicament from a canister including a housing 14 configured to selectively receive a slidable carriage 34 for loading a canister A into the housing, a closure panel 10 with a release button 20, 22 allows for opening up the housing and slidably receiving the carriage and canister, and then it closes back up to hold the canister and carriage into position for actuation by an actuator which includes a sear 64, a locking latch 70 prevents actuation of the device, as does cap 80, which must be moved to allow actuation, the latch being attached to an

air vane 79 which allows actuation upon inhalation by the user, and a lever 36 acts upon the carriage and forces the carriage and the canister towards the valve stem thus actuating the device to dispense medication. Palson et al. do not disclose a carriage that moves in and out of the housing while remaining attached to the housing. Fox et al. teach a carriage that holds a device that is movable outside the housing, while having the ability of remaining attached thereto, and movable within the housing for the purpose of inserting a device into the housing (ref. 5 moves in and out of ref. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Palson et al. with a carriage that slides in and out of the housing while remaining attached thereto in order to place a canister in the carriage outside of the housing and allow it to be moved into the housing. Fox also discloses an element (ref. 9 and 10) that is able to act as a lock or pushlink in order to arm or disarm the release of chemicals from the canister.

Claims 3-5, 29-31, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palson et al. and Fox et al. as applied to claims 2, 24, and 43 above, and further in view of Funabashi et al. Palson et al. and Fox et al. disclose the invention substantially as claimed except for the carriage moving by way of gears and teeth. Funabashi et al. disclose using gears (ref. 15, 11a, and 12) for moving a carriage. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Palson et al. and Fox et al. with gears, as taught by Funabashi et al., in order to move the carriage of Fox inside and outside of the housing of Palson et al. while maintaining an attachment between the carriage and housing.

Claims 15, 20-23, 38, and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palson et al. in view of Fox and further in view of Bryant (U.S. Patent No. 5,623,920). Palson et al. teach a device for dispensing medicament from a canister including a housing 14 configured to selectively receive a slidable carriage 34 for loading a canister A into the housing, a closure panel 10 with a release button 20, 22 allows for opening up the housing and slidably receiving the carriage and canister, and then it closes back up to hold the canister and carriage into position for actuation by an actuator which includes a sear 64, a locking latch 70 prevents actuation of the device, as does cap 80, which must be moved to allow actuation, the latch being attached to an air vane 79 which allows actuation upon inhalation by the user, and a lever 36 acts upon the carriage and forces the carriage and the canister towards the valve stem thus actuating the device to dispense medication. Palson et al. do not disclose a carriage that moves in and out of the housing while remaining attached to the housing. Fox et al. teach a carriage that holds a device that is movable outside the housing, while having the ability of remaining attached thereto, and movable within the housing for the purpose of inserting a device into the housing (ref. 5 moves in and out of ref. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Palson et al. with a carriage that slides in and out of the housing while remaining attached thereto in order to place a canister in the carriage outside of the housing and allow it to be moved into the housing. Fox also discloses an element (ref. 9 and 10) that is able to act as a lock or pushlink in order to arm or disarm the release of chemicals from the canister. Palson et al. and Fox et al. do not disclose the use of a seal on the housing. Bryant teaches a gasket seal (ref. 1, 3, and 19; col. 7, lines 7-11) in order to provide a gas-tight seal between the housing and container. Therefore, it would have

been obvious to one having ordinary skill in the art at the time of the invention to have modified Palson et al. and Fox et al. with a seal on the housing, as taught by Bryant, in order to prevent gas from leaking out from between the housing, carriage, and canister.

Claims 26 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palson et al. and Fox et al. as applied to claims 24 above, and further in view of Bryant. Palson et al. and Fox et al. do not disclose the use of a seal on the housing. Bryant teaches a gasket seal (ref. 1, 3, and 19; col. 7, lines 7-11) in order to provide a gas-tight seal between the housing and container. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Palson et al. and Fox et al. with a seal on the housing, as taught by Bryant, in order to prevent gas from leaking out from between the housing, carriage, and canister.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-48 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINA D. GETTMAN whose telephone number is (571)272-3128. The examiner can normally be reached on Monday-Thursday 6:45 am to 4:30 pm (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christina D Gettman/  
Examiner, Art Unit 3734  
571-272-3128

/Todd E Manahan/

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